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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/512,085	11/08/2004	Erik Hestvik	04196	2788
23338 7590 04/18/2008 DENNISON, SCHULTZ & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314				
EXAMINER				
MAL, TRI M				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
04/18/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/512,085

Applicant(s)

HESTVIK, ERIK

Examiner

Tri M. Mai

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-43 is/are pending in the application.
- 4a) Of the above claim(s) 29 and 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 26-28, 30-37 and 41-43 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

1. Claims 29, and 38-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as previously set forth.
2. Claims 26-28, 32-35, and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregg (6127072) in view of Parsons et al. (4955518). Gregg teaches a holder having a locking device having a first holding member having a gap at 84, a second holding member in Fig. 10 with a diameter in Fig. 10, and the distance between the first and second holding members being adjustable, col. 7, ln. 15, Gregg meets all claimed limitations except for clip with the locking device, Parsons teaches that it is known in the art to provide a clip with a locking device at 15. It would have been obvious to one of ordinary skill in the art to provide a holding clip locking device as taught by Parsons to provide added security.

Note that claims as amended do not add any structure to the device since the claim recites the baton only as an intended use.

Regarding claim 32, the first holding member in Gregg in view of Parsons inherently has a high frictional contact as compared to the second holding member due to the device having the strap holding tightly the content.

Regarding claim 41, Parsons teaches that it is known in the art to make holder from plastic, col. 3, ln. 56. It would have been obvious to one of ordinary skill in the art to make the holder from plastic to provide the desired material for the holding device.

3. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Gregg rejection in view of Oakes (3992799). Gregg meets all claimed limitations except for the material being rubber material. It would have been obvious to one of ordinary skill in the art to

provide rubber material as taught by Oakes, col. 4, ln. 18 to provide the desired material for the desired resiliency.

4. Claims 26, and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Austin et al. (4006825). Austin teaches a first holding member at 13 with a holding device 25 and a second holding member at 12 having an opening as claimed and the distance between the first and second holding members is adjustable, i.e., the two holding member can be adjusted via the screws 14.

5. Claims 30, 35, 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin in view of McClellan (4132381). Austin meets all claimed limitations except for the bracket and strap are manufacture from the same material. McClellan teaches that it is known in the art to provide the bracket and strap manufactured from the same material as one homogenous piece being rubber, col. 1, ln. 61. It would have been obvious to one of ordinary skill in the art to provide bracket and strap manufactured from the same material as taught by McClellan as one homogenous piece for convenience of manufacturing and/or to provide an alternative clamp for the device.

6. Claims 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Ratcliff et al. (6435469). Ratcliff teaches a first holding member 57 with a locking device 103, a second holder 33 and the distance being adjustable via 85, 87.

7. Claims 26, 34, 35, 42, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Marino (4751923). Marino teaches a 1st holding member being either loop 58 or 38, and the locking device is the hook and loop fasteners, and the other loop of 38 and 58 is the second loop

with a diameter as claimed, i.e, the loop can conform to the diameter of the device and thus having diameter as claimed. The two loops can be adjustable as claimed.

8. Claims 36, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marino in view of Chee (5086762). Marino teaches all claimed limitations except for the buckle. Chee teaches that it is known in the art to provide a buckle for a belt at 52. It would have been obvious to one of ordinary skill in the art to provide a belt as taught by Marino to provide an alternative device for belt.

It would have been obvious to one of ordinary skill in the art to provide the holding members on opposite sides of the buckle to provide the desired placement of the holding members.

9. Claims 26, 34 35, 36, 42, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (4863083). Chen teaches a 1st holding member being one of the loop in figs. 1, and the locking device is the hook and loop fasteners 28, and one of other loop of is the second loop with a diameter as claimed, i.e, the loop can conform to the diameter of the device and thus having diameter as claimed. The loops can be adjustable via the loops 24/30 as claimed.

10. Applicant's arguments have been fully considered but they are not persuasive.

Applicant traverses the disapproval of the drawings submitted on 8/22/2006. The examiner submits that the drawings submitted on 8/22/2006 are much more specific than the disclosure at page 2, ln. 13-15. Inter alias, the disclosure does not teach the specificities of the location, size the added structures, e.g. the strap in Fig. 6. The disapproval stands.

Note that claims as amended do not add any structure to the device since the claim recites the baton only as an intended use. Thus, all rejections stand.

With respect to the rejection of Gregg in view of Parsons, applicant asserts that the two holding members are not in accordance with the definition of claim 26. Applicant also question whether the two holding member are to be seen as separate. The examiner submits that the term "adjustable" is broad and the distance between the two holding members in Gregg are adjustable in col. 7, ln. 15. With respect to the two holding member being separate, claim 26 set forth the first and second holding members are separate components, The examiner submits that the two holding members in Gregg are separately formed components as claimed.

As to the combination with Parson, the two devices are clearly related as holding for handle members and they are quite combination especially in light of the recent decision under *KSR vs. Teleflex*. It is apparent that the old standard for analogous art has been put aside by the Supreme Court in *KSR*. As the court explained, when a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it either in the same field or a different one. If a person of ordinary skill can implement a predictable variation § 103 likely bars its patentability. *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

With respect to the Austin reference, applicant asserts that the two holding members are no adjustable. The examiner submits that the term "adjustable" is broad. the two holder are attached by the screws 14, and these screws are adjustable with respect choosing desired length for mounting the two holders 12 and 13.

With respect to the Ratcliff reference, applicant asserts that the grip end is at the holding member provided with a locking device, the examiner submits that claim 26 broadly set forth two holding members and no baton structure and how it is used is being positively recited at all.

The structures of Ratcliff meet the claimed limitations with respect to the two holding members and their adjustability along the belt.

With respect to the Marino reference, it is noted that the claim only set forth two holding members and there are two flexible holding members shown in Marino. With respect to the use of the device for a baton, the examiner submits that it is an intended use, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3781

/Tri M. Mai/

Primary Examiner, Art Unit 3781